STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Leo M. Kearns, Petitioner-Appellant, **v.** **Lee County Board of Review,** Respondent-Appellee.	**ORDER** **Docket No. 11-56-0093** **Parcel No. 01-23-18-13-127-0060** **Docket No. 11-56-0094** **Parcel No. 01-23-18-12-376-0410**

On March 30, 2012, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Leo M. Kearns was self-represented and submitted evidence in support of his petition. The Lee County Board of Review designated County Attorney Michael P. Short as its representative. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Leo M. Kearns, owner of property located in Montrose Township, Lee County, Iowa, appeals from the Lee County Board of Review decision reassessing his property. The real estate was classified residential for the January 1, 2011, assessment. Parcel 01-23-18-13-127-0060, Docket 11-56-0093 (Docket 0093), consists of 1.70 acres of vacant and/or submerged land along the Mississippi river, which was valued at $4500. Parcel 01-23-18-12-367-0410, Docket 11-56-0094 (Docket 0094), consists of 1.002 acres of vacant and/or submerged land adjacent to and submerged in the River. This parcel was valued at $25,390. The two subject properties are used in conjunction and for the benefit of another property owned by Kearns on which his cabin is located. A small part of Kearns' property is in the Frazier Langley Subdivision and the remainder is in the Koehler Addition. The portion of the

River that Kearn's property fronts is controlled by lock and dam and is not generally subject to flooding.

On Docket 0093, Kearns protested to the Board of Review on the grounds that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b) and that there was an error in the assessment under section 441.37(1)(d). Kearns claimed the error in the assessment related to the purchase price of five lots Essentially, this claim was akin to a market value challenge. For Docket 0094, Kearns protested on the grounds that the property was not equitably assessed under Iowa Code section 441.37(1)(a); the property was assessed for more than authorized by law under section 441.37(1)(b); and that there was an error in the assessment under section 441.37(1)(d). The Board of Review denied both protests.

Kearns then filed his appeals with this Board on the same grounds. Kearns claims the correct value for Docket 0093 is $3000 and for Docket 0094 is $4615.

Kearns testified that he purchased the Docket 0093 property for $10,000 not $15,000 as reported on the property record card. Kearns believes that because a $15,000 sales price was noted and used by the Assessor's Office in valuing his property, it has been over assessed. Kearns submitted evidence on land sales (Koehler-Submerged Land Values, Exhibit 2) that range from $1.60 per square foot to $6.81 per square foot, with an average of $3.45 per square foot. The subject property is at the high end of the range at $6.81. All sales took place in 2008; there was no adjustment for the time sale or any testimony regarding whether such adjustment would be necessary to reflect the 2011 assessment date. Kearns also provided a list of the assessed value of eight submerged lots that have assessments of $0 and one with an assessment of $500. Kearns argues his lot, like all of the submerged lots, has little or no value.

Teresa Murray, Lee County Assessor, testified on behalf of the Board of Review. Murray stated that she valued the submerged land based upon the linear footage of riverfront. Kearns property

is valued at $30 per front foot for approximately 500 feet of shoreline. The assessment was then given a 70% discount. At least three other properties were also valued using $30 a foot of shoreline and then given 70% obsolescence including the Meyers' property – Exhibit J; the Fuller property – Exhibit K; and the Hanlin property – Exhibit L). The disclosure sheet indicated the sales price was $15,000 for the lots. However, she does not dispute that Kearns paid $10,000 for the property. Murray noted the Assessor's Office recognized some of the sales involved compulsion to buy, amongst other factors, that could have distorted the sales prices of the properties previously owned by Union Electric; thus, they may not have been truly reflective of market value. We would tend to agree. First, the fact that Union Electric has been selling lots since 2007 would indicate that submerged lots do have value. Furthermore, if property owners felt compelled to purchase the property, or fear losing access to the river, or because it was a purchase of adjoining land, a *higher* sales price could have resulted. For these reasons, we find it reasonable that the Assessor's Office discounted the sales price to reflect these circumstances before arriving at a lineal-foot value to apply to the subject property and other similarly situated properties.

Murray also noted that they were unaware of some of the sales of submerged lots. Many of these sales were of the lots Kearns listed that had $0 assessments. Murray indicated these lots would be picked up for the next assessment cycle.

Regarding Docket 0094, Kearns testified this land is adjacent to the Mississippi River and is 83% submerged by the river. The dry land cannot be built on because of state and local regulations, as well as subdivision covenants. Kearns testified he was forced to purchase this property in 2005 to have access to the parcel on which his cabin is located. He paid $35,000 for the property, yet he again asserts this parcel has very little value. However, we note that without this parcel, Kearns would have no access to the road. Kearns submitted the assessed value of lots in the area of the subject property. These assessed values varied in size and location. For some of his calculations, Kearns only

considered the dry land of other properties to find an assessed value per square foot in 2010. In another instance, he used the total square footage. He then combined a value he arrived at for the dry land with a value for the submerged land to calculate a proffered assessment of $8566. We are uncertain why Kearns used purported 2010 assessments rather than the current assessment, and note it is less relevant than the current assessed values, particularly for equity comparisons.

The Board of Review provided six land sales from 2007-200 that ranged from $57,000 per acre to $73,000 per acre with a median indicated value of $66,000 per acre from adjoining housing developments. All of the properties are located within a quarter mile of the subject property and all have river access. The Assessor calculated some of the per-acre values by assigning a value to submerged land and calculating the per-acre value of the dry land; on other properties, a value was likewise attributed to the land after considering the value of the improvements. The subject property assessed value is $25,390 for slightly more than one acre. This is less than the average fair market value. Part of the difference is the greater percentage of submerged ground. This lot represents the front and side yard of the property with the cabin. The Board of Review states that the real estate should be valued as a whole, and not broken down into component parts and separately valued. The purposes of these tracts are to provide river access and a site for Mr. Kearns' cabin. Mr. Kearns owns a total of 3.495 acres. We tend to agree that because the property technically operates as a unit this fact may be considered for assessment purposes. Additionally, it would be possible for the assessor to combine these separate assessment parcels for one assessment. Currently, however, there are three separate assessment parcels, and each must have a value. The total assessed value for all of Kearn's land is $94,120 or $26,930 per acre. Even considering this total, it is still substantially less than fair market value provided by the Board of Review.

During the hearing, Kearns also questioned whether he owns the submerged land. He presented an Iowa Attorney General's Opinion and several Iowa Court cases referencing submerged

land and high water marks. Kearns stated he never addressed the issue in court because it was "cheaper" for him simply to buy the quitclaim deed to the property. We do not have jurisdiction to determine the appropriate ownership of the property.

After reviewing all the evidence, we find Kearns has failed to prove his property is over-assessed or inequitably assessed as compared with other like property. Furthermore, this Board finds no error in the assessment.

Conclusions of Law

The Appeal Board based its decision on the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determined anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.* 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

To prove inequity, a taxpayer may show an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shriver*, 257 Iowa 575, 133 N.W.2d 709 (1965). The six criteria include evidence showing

> "(1) that there are several other properties within a reasonable area similar and comparable...(2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination."

Id. at 579-580. The gist of this test is ratio difference between assessment and market value, even though Iowa law now requires assessments to be 100% or market value. § 441.21(1). The evidence offered by Kearns does not establish inequity in the assessment under the *Maxwell* or *Eagle Foods* tests in Docket 0094.

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). There is a statutory preference for establishing market values using sales of comparable properties. *Soifer v. Floyd County Board of Review,* 759 N.W.2d 775, 779 (Iowa 2009). The issue of comparability has two facets: the property must be comparable and the sale of that property must be a "normal transaction." *Id.* at 782-83. When sales of other properties are offered, they must be adjusted for differences that affect market value. *Id.* at 783. These differences could include size, age, use, condition, and location. Among others. *Id.* In addition, if a sales is "abnormal" or not arms-length, it must be analyzed to determine if an adjustment is necessary. *Id.* Kearns' evidence did not establish a market value for the subject properties in Docket 0093 or 0094 that is less than their assessments.

The evidence in the record does not support the claims of over-assessment brought before this Board. We, therefore, affirm the assessment of the subject properties located in Montrose Township, Lee County, Iowa, as determined by the Lee County Board of Review as of January 1, 2011.

THE APPEAL BOARD ORDERS that the January 1, 2011, assessments as determined by the Lee County Board of Review are affirmed.

Dated this 13 day of July 2012.

Richard Stradley, Presiding Officer

Jacqueline Rypma

Jacqueline Rypma, Board Member

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Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on 7-13, 2012.

By: ✓ U.S. Mail ___ FAX
___ Hand Delivered ___ Overnight Courier
___ Certified Mail ___ Other

Signature